

**UNITED STATES DISTRICT COURT
THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

FILED
FEB 08 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES OF AMERICA, Plaintiff,

Case Number CR09-00097 JW

v.

CLEMENTE HERNANDEZ-GARCIA, Defendant.ORDER OF DETENTION PENDING REVOCATION HEARING

In accordance with the Bail Reform Act, 18 U.S.C. § 3142, 3143(a) and Criminal Rule 32.1(a)(b), a detention hearing was held on January 31, 2012. Defendant was present, represented by his attorney Cynthia Lie, AFD. The United States was represented by Assistant U.S. Attorney Ann Marie Ursini.

PART I. PRESUMPTIONS APPLICABLE

☒ The defendant is charged with violating conditions of supervised release.

This establishes a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

/ / There is probable cause based upon (the indictment) (the facts found in Part IV below) to believe that the defendant has committed an offense

A. — for which a maximum term of imprisonment of 10 years or more is prescribed in 21 U.S.C. § 801 et seq., § 951 et seq., or § 955a et seq., OR

B. — under 18 U.S.C. § 924(c): use of a firearm during the commission of a felony.

This establishes a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

/ / No presumption applies but defendant has burden of offering clear and convincing evidence that his not a flight risk or a danger to the community.

☒ The defendant has not come forward with sufficient evidence to meet his burden, and he therefore will be ordered detained.

/ / The defendant has come forward with evidence to rebut the applicable presumption[s] to wit: .

Thus, the burden of proof shifts back to the United States.

PART III. PROOF (WHERE PRESUMPTIONS REBUTTED OR INAPPLICABLE)

/ / The United States has proved to a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required, AND/OR

/ / The United States has proved by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

PART IV. WRITTEN FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION

/ / The Court has taken into account the factors set out in 18 U.S.C. § 3142(g) and all of the information submitted at the hearing and finds as follows:

☒ Defendant, his attorney, and the AUSA have waived written findings.

PART V. DIRECTIONS REGARDING DETENTION

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate to the extent practicable from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on the request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

Dated: 2.8.2012

Paul S. Grewal
PAUL S. GREWAL
United States Magistrate Judge

AUSA __, ATTY __, PTS __